IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the matter of Orlando C. Diaz and Judith A. Diaz,	:	**CIVIL**
Debtors/Respondents,	:	
v.	:	
Chrysler Financial Company, LLC,	:	**NO. 00-4397**
Appellant.	:	

ORDER & MEMORANDUM

ORDER

AND NOW, this 5th day of February, 2001, upon consideration of the record on appeal, the Brief of Appellant, Chrysler Financial Company, LLC (Document No. 4, filed October 12, 2000), Brief of Appellees, Orlando C. Diaz and Judith A. Diaz (Document No. 5, filed October 27, 2000), and Reply Brief of Appellant, Chrysler Financial Company, LLC (Document No. 6, filed November 8, 2000), for the reasons set forth in the accompanying Memorandum, and this Court's Order of August 31, 2000, **IT IS ORDERED** that the Orders of the Bankruptcy Court dated August 2, 2000 and August 3, 2000 in In re Orlando C. Diaz & Judith Diaz, Bankruptcy No. 98-10764SR, are **AFFIRMED**.

IT IS FURTHER ORDERED, pursuant to Bankruptcy Rule 8012,[1] after an examination of the briefs, appendices to the briefs, and the record, and the Court's determination that the facts and legal issues implicated by the case are fully presented in the briefs and record and that the court's decisional process would not be aided significantly by oral argument, that appellant's request for oral argument is **DENIED**. See Hollar v. United States, 188 B.R. 539 (M.D.N.C. 1995).

MEMORANDUM

This case arises out of the Bankruptcy Court's order of August 2, 2000, reopening the bankruptcy case of Orlando C. Diaz and Judith A. Diaz (the "Diazes") and ordering Chrysler Financial Company, LLC ("Chrysler") to return a repossessed vehicle to the Diazes upon certain conditions. For the reasons discussed below, the Bankruptcy Court's order is affirmed.

I. INTRODUCTION

The Diazes were discharged in bankruptcy on June 10, 1998. At that time, they were in possession of a 1995 Dodge Caravan ("Caravan" or minivan) that had been financed through Chrysler Financial Company, LLC. No agreement to reaffirm the car loan under 11 U.S.C. § 524(c) was ever filed by the parties, although both sides agree that such a reaffirmation agreement was contemplated. Despite the fact that no such agreement was executed, the parties

[1] Bankruptcy Rule 8012 provides, in pertinent part, as follows:

> Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed.

acted, at least in part, as if a reaffirmation agreement was in force—the Diazes retained possession of the vehicle and continued to make monthly payments for approximately two years after their discharge in bankruptcy. Chrysler regularly accepted these payments; it contends, however, that it perceived its right to demand payments from the Diazes as cut off by the bankruptcy discharge. As such, when a payment was delinquent, Chrysler says it took no action to obtain payment because it assumed the debt was discharged.

As of July 5, 2000, Chrysler, believing the Diazes were 52 days in arrears in their payments, had the minivan repossessed. No notice of the proposed repossession was given to the Diazes prior to the repossession. The Diazes contended that they had made all required payments as of the date of the repossession.

On July 21, 2000, the Diazes filed a motion in bankruptcy court to enjoin the sale of and to recover the minivan; they also sought sanctions against Chrysler for allegedly violating a court order. A hearing was held on July 26, 2000 before the Bankruptcy Court in which the Bankruptcy Court ruled that the minivan should be returned to the Diazes provided that certain conditions were met.[2] The Bankruptcy Court then issued an Order dated August 2, 2000, memorializing the terms of its July 26, 2000 ruling. In the interim, on July 31, 2000, Chrysler filed a Motion to Stay the Bankruptcy Court's oral order of July 26, 2000 pending appeal, a Motion to Expedite Hearing and a Notice of Appeal. The Bankruptcy Court, by Order dated

[2] As noted in this Court's Order dated August 31, 2000, Chrysler was directed by the Bankruptcy Court on July 26, 2000 to return the minivan to the debtors subject to their prior performance of the following terms and conditions: (1) the debtors must reaffirm the debt to Chrysler; (2) the debtors must pay to Chrysler any missing payments due; and (3) the debtors must provide proof of insurance to Chrysler. The Bankruptcy Court also ruled that the Diazes were responsible for Chrysler's repossession costs and reasonable attorney's fees.

August 3, 2000, denied the Motion to Stay and appears to have granted the Motion to Expedite Hearing. Thereafter, on August 11, 2000, Chrysler filed an Amended Notice of Appeal from the Orders dated August 2 and August 3, 2000.

On August 8, 2000, Chrysler initiated a miscellaneous action in this Court, Misc. No. 00-149, by filing a Motion for Stay Pending Appeal and a Motion for Shortening the Time for Notice and for Expedited Hearing. By Order dated August 31, 2000, this Court denied Chrysler's Motion for Stay Pending Appeal, and denied as moot Chrysler's Motion for Shortening the Time for Notice and for Expedited Hearing. That Order decided all of the issues raised by the appeal of the August 3, 2000 Bankruptcy Court Order. All of the remaining issues raised by the two notices of appeal filed by Chrysler are addressed in this Memorandum.

II. JURISDICTION

This Court has jurisdiction over appeals from final judgments, orders, and decrees of the bankruptcy court. 28 U.S.C. § 158.

III. STANDARD OF REVIEW

The standard of review applied by the district court in reviewing a bankruptcy court's order is clearly erroneous as to factual questions under Bankruptcy Rule 8013.[3] The Court

[3] Bankruptcy Rule 8013 provides:

> On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the

reviews the bankruptcy court's conclusions of law de novo. See Donaldson v. Bernstein, 104 F.3d 547, 551 (3d Cir. 1997); Trefny v. Bear Stearns Securities Corp., 243 B.R. 300, 308 (S.D. Tex. 1999).

IV. ANALYSIS

Two main issues are presented on appeal: (1) Did the Bankruptcy Court exceed its authority when it sua sponte reopened a bankruptcy judgment pursuant to 11 U.S.C. § 105?; and (2) Did the Bankruptcy Court exceed its authority when it granted appellees relief in the form of a nunc pro tunc reaffirmation agreement subsequent to the grant of appellees' discharge in bankruptcy?[4] Upon consideration of the facts of this case as found by the Bankruptcy Court and

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witnesses.

[4] Appellant characterizes the issues presented on appeal as four discrete questions: (1) Did the Bankruptcy Court exceed its authority when it sua sponte reopened a closed and discharged Chapter 7 case for the purpose of conditionally restraining Chrysler from selling the vehicle which Chrysler had lawfully repossessed, and directed Chrysler to return the vehicle to the Debtors, on terms?; (2) Did the Bankruptcy Court exceed its authority when it directed and permitted the entry of a nunc pro tunc reaffirmation agreement, and otherwise permitted the revival of a discharged debt?; (3) Did the Bankruptcy Court exceed its authority when it directed or permitted the Debtor to waive the sixty (60) day rescission period required by Code § 524(c)(2)(a)?; and (4) Did the Bankruptcy Court exceed its authority when it compelled Chrysler to enter into a reaffirmation agreement? Br. for Appellant at 3.

Appellee characterizes the questions presented on appeal as three in number: (1) Was the Bankruptcy Court's discretionary authority under 11 U.S.C. § 105 sufficient to permit it to deal with the present controversy on its merits and in a manner which effectively accorded relief to the parties?; (2) Was there any substantive impediment to granting the Debtors relief exit by virtue of the fact that the Reaffirmation Agreement proposed by the Debtors would be entered into after the granting of their discharge under 11 U.S.C. § 524(c)(1)?; and (3) Did the Court have authority to grant the Debtors motion for relief nunc pro tunc on its own motion? Br. for Appellee at 3.

a plenary review of the applicable law, this Court concludes that the Bankruptcy Court acted within its discretion and authority and the judgment of the Bankruptcy Court is affirmed.

A. Sua Sponte Reopening of the Bankruptcy Judgment

The scope of the bankruptcy court's power is a question of law; this Court shall review the Bankruptcy Court's conclusions on this issue de novo. Section 105 of the Bankruptcy Code provides, in pertinent part, as follows:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a) (1994).

"Section 105, especially its second sentence, is often used as the jurisdictional basis" for the bankruptcy court's regulation of the parties that come before it. Collier on Bankruptcy (15th rev. ed.) (Matthew Bender) ¶ 105.04[7], at 105-79. Although this code provision affords substantial discretion to the bankruptcy court, the bankruptcy court is, of course, constrained by the limits of the Bankruptcy Code. See Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S. Ct. 963, 968, 99 L. Ed. 2d 169 (1988) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."); see generally In re Federated Department Stores, Inc., 133 B.R. 886, 890 (S.D. Ohio 1991) ("[W]ithin these established confines, the Bankruptcy Court has wide authority to utilize its power in equity.").

Pursuant to the Bankruptcy Code, bankruptcy courts are deemed to have the power to reopen bankruptcy judgments "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b) (1994). This power may be exercised sua sponte in appropriate circumstances. See Donaldson v. Bernstein, 104 F.3d 547, 552 (3d Cir. 1997) (affirming bankruptcy court's reopening of a case on the court's own motion pursuant to its power under 11 U.S.C. § 105(a)) (citing In re Doty, 129 B.R. 571, 579–80 (Bankr. N.D. Ind. 1991)); In re Searles, 70 B.R. 266 (D. R.I. 1987) (concluding that 11 U.S.C. § 350(b) permits a court to reopen a case sua sponte); see also In re Mullendore, 741 F.2d 306, 308 (10th Cir. 1984) ("[C]ontrary to appellants' contention that the bankruptcy judge had no authority to reopen the estate and enter the order assessing the fee, 'it has been suggested that perhaps the court could make a reopening sua sponte'" (citation omitted)); In re Warren, 24 B.R. 846 (Bankr. W.D. Ky. 1982) (reopening a closed bankruptcy case sua sponte). The bankruptcy court's reopening of bankruptcy proceedings should not be disturbed absent an abuse of discretion. See Donaldson v. Bernstein, 104 F.3d 547, 551 (3d Cir. 1997) ("We review a bankruptcy court's decision whether to reopen a case pursuant to 11 U.S.C. § 350(b) on an abuse of discretion standard.").

In this case, the Bankruptcy Court noted in its opinion that the debtors' motion should have included a request to formally reopen the closed bankruptcy case. However, the court concluded that "this flaw [was] not fatal, as the [Bankruptcy] Court deem[ed] its discretionary authority under 11 U.S.C. 105 sufficient to permit it to deal with the present controversy on its merits and in a manner which will effectively accord relief to the parties . . . ." In re Orlando C. Diaz and Judith A. Diaz, Bankr. No. 98-10764, Opinion dated August 2, 2000, at 4 (hereinafter "Diaz"). The bankruptcy court's equitable jurisdiction contemplated in § 105, in conjunction

with its independent authority to reopen closed bankruptcy cases pursuant to § 350(b), is more than sufficient to authorize the court's exercise of its equity power under the circumstances of this case. This Court thus concludes that the Bankruptcy Court did not abuse its discretion by reopening the case on its own motion.

Chrysler also argues that if the Diazes' complaint was properly addressed to the bankruptcy court, the bankruptcy court should have required them to meet the prerequisites for injunctive relief. Preliminary injunctive relief is appropriate where "(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." Maldonado v. Houstoun, 157 F.3d 179, 184 (3d Cir. 1998) (citation omitted). As stated in this Court's Order dated August 31, 2000 denying Chrysler's motion for a stay pending appeal, the injunctive relief factors favor the debtors, not Chrysler. Chrysler's rights are adequately protected by the Bankruptcy Court's order; the balance of harms in this case favors the debtors, who would be without transportation by vehicle if Chrysler were permitted to repossess the vehicle; and the policies underlying the Bankruptcy Code and the public interest favor the debtors, not Chrysler. See In re Diaz, Misc. No. 00-149 (Aug. 31, 2000).

In addition, Chrysler contends that the Bankruptcy Court's order was a violation of Bankruptcy Rule 9014,[5] which requires reasonable notice and an opportunity for a hearing in

[5] Bankruptcy Rule 9014 provides, in pertinent part:

> In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion.

contested matters. Although held on short notice due to the circumstances under which the vehicle was repossessed, appellant received notice and the Bankruptcy Court held an adversarial hearing on July 26, 2000, at which Chrysler was adequately represented. In fact, counsel for Chrysler actually suggested the relief ultimately ordered by the Bankruptcy Court.[6]

Having concluded that the Bankruptcy Court validly exercised its authority under § 105, that the prerequisites for granting injunctive relief had been met, and that the requirements of Bankruptcy Rule 9014 were met, the Court holds that the Bankruptcy Court's sua sponte reopening of the case was not an abuse of discretion.

B. Reaffirmation Agreement

Chrysler contends that a reaffirmation agreement entered into subsequent to a discharge in bankruptcy is unenforceable. Although it is true as a general matter under 11 U.S.C. § 524(c), that reaffirmation agreements must be entered prior to discharge, see, e.g., In re LeBeau, 247 B.R. 537, 539 (Bankr. M.D. Fla. 2000), the Bankruptcy Court concluded that its power under § 105 was sufficient to deal with the present controversy on the merits. As discussed supra, although 11 U.S.C. § 105 is not an unfettered grant of power to the bankruptcy judge, the Bankruptcy Court could have validly exercised its authority pursuant to 11 U.S.C. § 350(b) to reopen the case and effect the remedy ultimately ordered in this case.

The parties in this case acted as if a reaffirmation agreement was in force for approximately two years. As a result, the court below concluded that it would be unjust to permit

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[6] Counsel for Chrysler suggested to the Court that "if [the court is] inclined to let them get the vehicle back for payment, I would ask that we be paid for the repossession fees, the attorney's fees, and if you're going to reopen the case, have them sign the reaffirmation . . . ." Hearing Tr. at 9–10 (July 26, 2000), Record, Item 12.

Chrysler to maintain that it was at liberty to repossess the vehicle at any time without providing the Diazes with notice of delinquency. The Bankruptcy Court wrote:

> Although it is true that a reaffirmation agreement was never executed, the parties acted as though one had been, at least in the most significant respect, to wit: the tender and acceptance of monthly payments for approximately two years. It is wholly inequitable against such a backdrop for Chrysler to maintain that it was at liberty to repossess the vehicle without any form of prior notice of delinquency, such as might have been required under the original note or other applicable non-bankruptcy laws. Had Chrysler acted in the immediate aftermath of the closing of the Bankruptcy case, a better case might perhaps be made for its position. Having effectively lulled the Debtors into a false sense of security, however, it seems axiomatic that Chrysler is estopped from taking the position it now does, and indeed, the Court so finds.

Diaz at 3.

This Court concludes that the Bankruptcy Court's findings of fact as to Chrysler's actions with respect to accepting payments for almost two years are supported by the record evidence and the Bankruptcy Court's conclusion based on these facts—that Chrysler is estopped from arguing that since no reaffirmation agreement was in effect, it was at liberty to repossess the car at any time with no notice—was appropriate.

Chrysler also contends that the Bankruptcy Court forced it into the reaffirmation agreement.[7] However, as discussed supra, Chrysler acted, by accepting payments for approximately two years, as if a reaffirmation agreement between the parties was in force. In addition, once counsel for Chrysler learned that the Bankruptcy Court was inclined to return the vehicle to the Diazes, Chrysler's counsel suggested a reaffirmation agreement and the other relief

[7] It is axiomatic that reaffirmation agreements must be entered into voluntarily. See generally Collier on Bankruptcy (15th rev. ed.) (Matthew Bender) ¶ 524.04[1], at 524-31 ("Of course, to be an enforceable agreement, the reaffirmation agreement must also be one to which both the debtor and creditor agree.") (citing In re Turner, 208 B.R. 434 (Bankr. C.D. Ill. 1997)).

ultimately ordered. In light of these circumstances, this Court concludes that the Bankruptcy Court's order by which the parties entered into the reaffirmation agreement was not an abuse of discretion.

The only remaining question is whether or not the Bankruptcy Court's conclusions of law as to its authority to enter a nunc pro tunc reaffirmation agreement were correct.[8] Nunc pro tunc orders in bankruptcy are permissible. See, e.g., In re Thinking Machines, Corp., 67 F.3d 1021, 1028 (1st Cir. 1995) (writing that retroactive orders are permissible and should be entered under certain circumstances, "when the balance of equities preponderates in favor of such remediation"); In re Grand Valley Sport & Marine, Inc., 143 B.R. 840 (Bankr. W.D. Mich. 1992) (authorizing postpetition financing nunc pro tunc).

As the Bankruptcy Court correctly noted, 11 U.S.C. § 524(c)(1),[9] the statutory provision that requires reaffirmation agreements to be executed prior to discharge, "exists to confine overreaching lenders from improper post discharge activity, not to hamstring Debtors in circumstances such as these." Diaz, at 4. Given the goals and policy considerations underlying

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[8] Appellant's argument that the court below exceeded its authority by entering a reaffirmation agreement that did not include the statutorily-required 60-day opt-out period is misplaced under the circumstances of this case. See 11 U.S.C. § 524(c)(2). This protection is afforded to the debtor in bankruptcy as a shield; it is not a sword to be used by creditors to invalidate reaffirmation agreements on technical grounds. Furthermore, appellees acted as if a reaffirmation agreement was in effect for over two years; the time period for the opt-out protection afforded the debtors by § 524(c)(2) has long passed.

[9] 11 U.S.C. § 524(c)(1) (1994) provides:

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge . . . .

the Bankruptcy Code, the Bankruptcy Court's decision struck an appropriate balance between protecting both the debtor and the rights of the creditor. See generally In re Rosinski, 759 F.2d 539, 541 (6th Cir. 1985) (permitting a debtor to amend her schedule of assets subsequent to discharge to include a claim that was not previously included where there was no evidence of fraud and no prejudice to creditor). Finally, the Bankruptcy Court concluded that any issue as to timeliness of the reaffirmation, in connection with 11 U.S.C. § 524(c)(1) was obviated by entering the order nunc pro tunc.

This Court agrees with the Bankruptcy Court's conclusion that the balance of equities in this case favored the return of the Caravan to the debtors, and the entry of a nunc pro tunc reaffirmation agreement. Having determined that the remedy ordered by the Bankruptcy Court was appropriate under the unusual circumstances of this case, and that the Bankruptcy Court had the authority to reopen its judgment, the Bankruptcy Court's Order of August 2, 2000 is affirmed.

V. CONCLUSION

For the foregoing reasons, the Bankruptcy Court's August 2, 2000 Order is affirmed. The Bankruptcy Court's August 3, 2000 Order denying Chrysler's Motion for Stay Pending Appeal is affirmed for the reasons stated in this Court's Order of August 31, 2000.

BY THE COURT:

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JAN E. DUBOIS, J.